105TH CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPORT
105–158

TELEMARKETING FRAUD PREVENTION ACT OF 1997

JUNE 26, 1997.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. MCCOLLUM, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 1847]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1847) to improve the criminal law relating to fraud against consumers, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Telemarketing Fraud Prevention Act of 1997".

SEC. 2. FORFEITURE OF FRAUD PROCEEDS.

Section 982(a) of title 18, United States Code, is amended by adding at the end the following:

"(8) The Court, in sentencing a defendant for an offense under section 2326, shall order that the defendant forfeit to the United States any real or personal property—

"(A) used or intended to be used to commit or to promote the commission of such offense, if the court in its discretion so determines, taking into consideration the nature, scope, and proportionality of the use of the property in the offense; and

"(B) constituting, derived from, or traceable to the gross proceeds that the defendant obtained directly or indirectly as a result of the offense.".

SEC. 3. SENTENCING GUIDELINES CHANGES.

Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall review and amend the sentencing guidelines to provide a sentencing enhancement for any offense listed in section 2326 of title 18, United States Code—

(1) by at least 4 levels if the circumstances authorizing an additional term of imprisonment under section 2326(1) are present; and

39–006

(2) by at least 8 levels if the circumstances authorizing an additional term of imprisonment under section 2326(2) are present.

SEC. 4. INCREASED PUNISHMENT FOR USE OF FOREIGN LOCATION TO EVADE PROSECUTION.

Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall amend the sentencing guidelines to increase the offense level for any fraud offense by at least 2 levels if the defendant conducted activities to further the fraud from a foreign country.

SEC. 5. SENTENCING COMMISSION DUTIES.

The Sentencing Commission shall ensure that the sentences, guidelines, and policy statements for offenders convicted of offenses described in sections 3 and 4 are appropriately severe and reasonably consistent with other relevant directives and with other guidelines.

SEC. 6. CLARIFICATION OF ENHANCEMENT OF PENALTIES.

Section 2327(a) of title 18, United States Code, is amended by striking "under this chapter" and inserting "for which an enhanced penalty is provided under section 2326 of this title".

SEC. 7. ADDITION OF CONSPIRACY OFFENSES TO SECTION 2326 ENHANCEMENT.

Section 2326 of title 18, United States Code, is amended by inserting ", or a conspiracy to commit such an offense," after "or 1344".

PURPOSE AND SUMMARY

H.R. 1847, the "Telemarketing Fraud Prevention Act of 1997," increases penalties for fraudulent schemes committed by illegitimate, criminal telemarketers. The bill directs the United States Sentencing Commission to review and amend the guidelines to provide a sentencing enhancement for any offense listed in § 2326 of title 18, United States Code. Section 2326 is the penalties section of the Telemarketing Fraud chapter of the criminal code. The Sentencing Commission is instructed to increase the sentence by at least 4 levels for general telemarketing fraud, and increase by at least 8 levels if the defendant victimized persons over the age of 55. The Sentencing Commission is also directed to increase the offense level for any fraud which involved criminal activities committed from a foreign country.

H.R. 1847 also requires that a defendant convicted of a telemarketing scam forfeit all property used in the offense, or any proceeds received as a result of the offense. Finally, the bill includes a conspiracy provision, to allow prosecutors to punish the organizers of these illegal activities.

BACKGROUND AND NEED FOR THE LEGISLATION

Older Americans are popular targets for fraudulent telemarketers. Many elderly people are lonely and appreciate having someone to talk to, even if that person is asking for money. Others are too polite, or too intimidated, to hang up on their callers. A survey conducted by the American Association of Retired Persons shows that two-thirds of older victims simply can't tell an honest sales pitch from a dishonest one. [1]

These con artists blend psychology with salesmanship to persuade their elderly victims to send them money. They sometimes feign friendship, and ask questions about the victim's families, neighbors and pets. They encourage their victims to share personal

[1] American Association of Retired Persons, *Telemarketing Fraud Victimization of Older Americans*, January, 1996.

information, which they later use against them. If the victim resists, the callers sometimes become abusive, or threaten bogus lawsuits. If met with continued resistance, the con artist simply sells the elderly person's name to another fraudulent telemarketer, and the cycle begins anew. [2]

Although older Americans are prime targets for fraudulent telemarketers, they are certainly not the only citizens victimized by these crimes. Fraudulent telemarketers strike at all ages, sexes, financial and educational levels. Many otherwise savvy consumers are tricked into believing that the caller is collecting money for a religious or charitable organization. Other crooks promote phony investment schemes. A common ploy is for the caller to claim that the victim has won a valuable prize, and to collect that prize, the victim need only send a few hundred dollars to cover taxes and shipping charges. The victim is then plagued by additional telephone calls, with the caller promising bigger and grander prizes each time if more money is sent. Often, paltry trinkets are mailed to the victim to keep the charade alive.

One of the most vicious scams is the "recovery room" operation. Recovery room operators buy lists from other fraudulent telemarketers containing the names of victims and how much money they have already lost. In this particularly cruel scam, the con artists then call the victims pretending to be private investigators or attorneys. They pledge to recover the money the victims have already lost to the other telemarketers, in return for an enormous advanced fee. Most victims are so desperate that they are willing to try anything, and they send the requested payment to the recovery room operators.

The Federal Trade Commission estimates that telemarketing fraud costs consumers about $40 billion a year. Many people lose thousands of dollars, some have reported losing their entire life's savings. H.R. 1847 strikes back at crooked telemarketers by forcing them to forfeit all real or personal property used in the offense, or any proceeds received as a result of the offense. It also directs the U.S. Sentencing Commission to amend the guidelines to provide a sentencing enhancement for any telemarketing offense. The punishment shall be even harsher for criminals who purposely target the elderly. Moreover, the bill includes conspiracy language, so prosecutors can attack those crooks who arrange and organize crooked telemarketing schemes, but who are also crafty enough to avoid committing the fraud themselves.

HEARINGS

No hearings were held on H.R. 1847.

COMMITTEE CONSIDERATION

On June 12, 1997, the Subcommittee on Crime met in open session and ordered reported the bill H.R. 1847, by a voice vote, a quorum being present. On June 18, 1997, the Committee met in open session and ordered reported favorably the bill H.R. 1847 with amendment by a voice vote, a quorum being present.

---

[2] *See, Consumer Fraud Prevention Act,*: Hearing on H.R. 1499 Before the Subcomm. on Crime of the House Comm. On the Judiciary, 104th Cong., 2nd Sess. No. 97 (April, 1996).

VOTE OF THE COMMITTEE

There were no recorded votes.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(l)(3)(B) of House Rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 1847, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 25, 1997.

Hon. HENRY J. HYDE,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1847, the Telemarketing Fraud Prevention Act of 1997.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz.

Sincerely,

JAMES L. BLUM
(For June E. O'Neill, Director).

Enclosure.

H.R. 1847—Telemarketing Fraud Prevention Act of 1997

CBO estimates that implementing H.R. 1847 would result in additional federal costs, subject to the availability of appropriated funds, to accommodate prisoners for longer periods of time, but such costs would be less than $500,000 annually for the next five years. Enacting H.R. 1847 also could lead to an increase in direct spending and receipts; therefore, pay-as-you-go procedures would apply. However, CBO estimates that any increases in direct spending and receipts would likely be less than $500,000 annually.

H.R. 1847 would direct the United States Sentencing Commission to increase penalties recommended for telemarketing fraud. The commission has assigned each federal crime a base offense level, numbered from 1 to 43, which corresponds to a certain recommended length of imprisonment, with higher numbers reflecting longer prison terms. The bill would direct the commission to amend the federal sentencing guidelines to increase the base offense level by at least 2 levels if the offense involves use of a foreign location, by at least 4 levels for any case of telemarketing fraud, and by at least 8 levels if elderly victims are involved. In addition, the bill would subject any real or personal property used in or gained from telemarketing fraud to forfeiture to the United States.

According to the U.S. Sentencing Commission, the bill's provisions probably would affect fewer than 10 individuals per year. Assuming no significant change in the number of annual convictions, CBO estimates that additional costs of longer prison sentences would be less than $500,000 a year for at least the next five fiscal years, subject to the availability of appropriated funds.

Because the maximum fine for an offense increases as the offense level increases, the bill's sentencing enhancements also could result in increased criminal fines. Therefore, enacting H.R. 1847 could increase governmental receipts through greater fine collections. However, CBO estimates that any such increase would be less than $500,000 annually. Criminal fines are deposited in the Crime Victims Fund and spent the following year. Thus, the change in direct spending from the fund would match any increase in revenues attributable to H.R. 1847, with a one-year lag.

Finally, enacting H.R. 1847 could lead to more assets seized and forfeited to the United States, but we estimate that any such increase would be less than $500,000 annually in value. Proceeds from the sale of any such assets would be deposited as revenues into the assets forfeiture fund of the Department of Justice and spent out of that fund in the same year. Thus, the change in direct spending from the asset forfeiture fund would match any increase in revenues to that fund.

H.R. 1847 contains no intergovernmental or private-sector mandates as defined to the Unfunded Mandates Reform Act of 1995 and would have no significant impact on the budgets of state, local, or tribal government.

The CBO staff contact for this estimate is Mark Grabowicz. This estimate was approved by Paul N. Van de Water, Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to rule XI, clause 2(l)(4) of the Rules of the House of Representatives, the Committee finds the authority for this legislation in Article I, section 8 of the Constitution.

Section-by-Section Analysis

SECTION 1. SHORT TITLE

This section states that this bill shall be cited as the "Telemarketing Fraud Prevention Act of 1997."

SEC. 2. FORFEITURE OF FRAUD PROCEEDS

This section states that a defendant convicted of an offense under § 2326 of title 18, United States Code, shall be ordered to forfeit any real or personal property—(A) used or intended to be used to promote the commission of the offense; or (B) constituting, derived from, or traceable to the gross proceeds that the defendant obtained directly or indirectly as a result of the offense.

SEC. 3. SENTENCING GUIDELINES CHANGES

This section directs the U.S. Sentencing Commission to review and amend its guidelines to provide a sentencing enhancement for any offense listed in § 2326 of title 18, United States Code. The Committee expects the Commission to ensure that sentences, guidelines and policy statements are appropriately severe, and reasonably consistent with other relevant guidelines and directives. The Committee further expects the Commission to review the guidelines to avoid issues of double counting for the same or substantially similar offenses. As an example, the Committee leaves to the Sentencing Commission's discretion whether an adjustment for vulnerable victims would be appropriate with an adjustment for telemarketing fraud targeting persons over the age of 55.

SEC. 4. INCREASED PUNISHMENT FOR USE OF FOREIGN LOCATION TO EVADE PROSECUTION

This section directs the U.S. Sentencing Commission to review and amend the guidelines to increase the offense level for any fraud offense by at least 2 levels if the defendant conducted activities to further the fraud from a foreign country. Again, the Committee expects the Commission to ensure that the sentences, guidelines and policy statements are appropriately severe and reasonably consistent with other relevant directives, and avoid issues of double counting.

SEC. 5. CLARIFICATION OF ENHANCEMENT OF PENALTIES

This section clarifies that section 2326 is a penalty enhancement.

SEC. 6. ADDITION OF CONSPIRACY OFFENSES TO SECTION 2326 ENHANCEMENT

This section adds conspiracy language to § 2326 of title 18, United States Code. This will allow prosecutors to target the organizers of fraudulent telemarketing activities.

Agency Views

No agency views were received on H.R. 1847.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 18, UNITED STATES CODE

* * * * * * *

PART I—CRIMES

* * * * * * *

CHAPTER 46—FORFEITURE

* * * * * * *

§ 982. Criminal forfeiture

(a)(1) * * *

* * * * * * *

(8) The Court, in sentencing a defendant for an offense under section 2326, shall order that the defendant forfeit to the United States any real or personal property—

(A) used or intended to be used to commit or to promote the commission of such offense, if the court in its discretion so determines, taking into consideration the nature, scope, and proportionality of the use of the property in the offense; and

(B) constituting, derived from, or traceable to the gross proceeds that the defendant obtained directly or indirectly as a result of the offense.

* * * * * * *

CHAPTER 113A—TELEMARKETING FRAUD

* * * * * * *

§ 2326. Enhanced penalties

A person who is convicted of an offense under section 1028, 1029, 1341, 1342, 1343, or 1344*, or a conspiracy to commit such an offense,* in connection with the conduct of telemarketing—

(1) * * *

* * * * * * *

§ 2327. Mandatory restitution

(a) IN GENERAL.—Notwithstanding section 3663 or 3663A, and in addition to any other civil or criminal penalty authorized by law, the court shall order restitution for any offense [under this chapter] *for which an enhanced penalty is provided under section 2326 of this title.*

*　　　*　　　*　　　*　　　*　　　*　　　*

○